IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 289 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NISHAT KARIMI

Versus

IFTEKHAR A KARIMI

Appearance:

Mr.M.R. Barot, with MRS KRISHNA V BAROT,
for the Petitioner.

MR MA KHARADI for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/05/2004

ORAL JUDGEMENT

In this petition, the Court is required to decide the fate of an unfortunate child, who has not been looked after by the father, who is the respondent in this revision application and who is settled in the U.S.A. It

is most unfortunate that even though the Juvenile and Domestic Relations Court for the City of Waynesboro, U.S.A., passed an order in favour of the child, Nida Karimi, the father has not tried to support the said child by arranging any amount for the welfare and benefit of the said child.

The chequered history of the case is as under :-

In the year 1988, mother and father lawfully got married in Indiana. Mother moved to India in 1989, where she gave birth to the couple's only child on 19.7.1989. The father remained in the United States of America and, eventually, moved to Waynesboro, to work as an Engineer.

In view of some matrimonial dispute, the husband and wife separated. Since the husband was not taking care of the child, in the year 1995, mother came to Virginia and commenced the action for child support in the Juvenile and Domestic Relations District Court for the City of Waynesboro. The said Court, vide its order dated 6th July, 1995, awarded $500.00 a month towards child support.

Since the mother and child, both left U.S.A. for India, the respondent moved the Circuit Court of the City of Waynesboro for abating the child support order. The said Circuit Court passed an order on 7th May, 1997, directing abatement of the child support order effective from March 3, 1997, on the ground that the child is no longer remaining within the jurisdiction of the Court.

The said order was taken in appeal at the instance of the petitioner before the Court of Appeals of Virginia. The Court of Appeals found that the trial court's abatement of the child support order did not consider the father's continuing obligation to support his child and failed to consider the child's best interest and need for support. The Court of Appeals found that the trial court's abatement of the child support order, merely because the parent and child are no longer resided in Virginia, was an abuse of discretion. The trial court's order was accordingly reversed and the Court of Appeals remanded the matter to the trial court. The operative part of the order dated 16.6.1998, passed by the Court of Appeals of Virginia, reads as under :-

" ... ...

However, we find the trial court's abatement of the child support order failed to consider the

father's continuing obligation to support his child and failed to consider the child's best interest and need for support. By abating the support order, the trial court placed the custodial parent, who had obtained an enforceable support order in the jurisdiction of the father's residence, in the position of having no enforceable support order. The trial court could have exercised its continuing original jurisdiction, on motion of the father or on its own motion pursuant to Code # 20-108, to modify father's support obligations to reflect the lower cost of living in India or to take into account the father's loss of employment in Virginia. Where the trial court could have reduced the father's support obligation and ensured continued support for the child, the court abused its discretion by terminating support for the child merely because the parents and child no longer resided in Virginia. Accordingly, we reverse the trial court's order terminating father's obligation to pay child support and remand the case for further proceedings in accordance with this opinion.

... ..."

The husband carried the matter further by way of a petition for appeal before the Supreme Court of Virginia, which Court, vide order dated 27.8.1998, dismissed the said petition for appeal of the father. The said order of the Supreme Court of Virginia reads as under :-

" ... ...

Finding that the decision of the Court of Appeals does not involve (1) a substantial constitutional question as a determinative issue, or (2) matters of significant precedential value, the Court dismisses the petition for appeal filed in the above-styled case. Code # 17-116.07(A) (3) and (B).

... ..."

The respondent-husband subsequently came to India and initiated proceedings for taking custody of the child. In that application, the petitioner submitted an application, asking the husband to continue the child

support by making payment of maintenance to the child, as ordered by the Juvenile and Domestic Relations Court for the City of Waynesboro, on 6th July, 1995. The trial court rejected the said application on the ground that the Court of Appeals remanded the matter to the trial court for passing a fresh order. The trial court has also observed that it would not be just and reasonable for the Court to pass the order, as prayed for, when it is not clear whether the husband is in arrears or not, or whether he was required to make any payment or not. The trial court found itself in a helpless position since there was no material before the trial court to find out whether the husband has paid any amount towards child support. The trial court, however, has failed to consider an important aspect to the effect that at the time when that proceeding was pending, the husband was already available within the jurisdiction of that Court and he was represented by a counsel. The trial court could have very well found out the aforesaid facts by making enquiry from the respondent-husband, who was present before the trial court, as he submitted an application for getting custody of the child. During the process, unfortunately, the husband has again left the country and he is now in the U.S.A.

Mr.Kharadi, learned Advocate for the husband, submitted that he is not knowing the whereabouts of the husband and when the husband was in India, he signed the authority letter, viz., the Vakalatnama.

Mr.Kharadi for the respondent-husband has fairly submitted that the father is bound to support the child and in spite of his best efforts, he is not in a position to find out the respondent-husband since he is not in India. It is not in dispute, and it is practically an admitted position that the order of child support, which was, initially, passed by the Juvenile and Domestic Relations Court for the City of Waynesboro, is still in existence and it is still not reversed or annulled or modified in any manner. If that be so, a child cannot be allowed to suffer without getting any support from its father, i.e. the respondent herein. In this legal battle, the real casualty is the unfortunate child and the father of the child has not taken care to support the said child in spite of the order passed by the Juvenile and Domestic Relations District Court for the City of Waynesboro. The learned counsel for the petitioner submitted that the daughter of the petitioner and respondent is aged about 15 years and she is not in a position even to take best education as the father has refused to support her in spite of the order of the

Juvenile and Domestic Relations Court for the City of Waynesboro. It is most unfortunate that the father, who is required to support the child, has totally flouted and ignored the order dated 16.6.1998, passed by the Court of Appeals, Virginia, by which the Court of Appeals reversed the order dated 7.5.1997 passed by the trial court, viz., the Circuit Court of Virginia, directing abatement of the child support order, meaning thereby, the original order, dated 6.7.1995, passed by the Juvenile and Domestic Relations Court for the City of Waynesboro, directing payment of $500.00 per month towards child support, was revived.

There is absolutely no justification nor was any justification offered by Mr.Kharadi, for the respondent-husband to justify the stand of the father in not supporting the child and leaving the child in the lurch. The application submitted by the wife before the trial court is rejected absolutely on irrelevant grounds. It is the duty of the court to see that the interest of a minor is protected. The Court cannot ignore the reality of the fact that the minor child is totally ignored by the father, who has not obeyed the order passed by the Juvenile and Domestic Relations Court for the City of Waynesboro, in connection with child support. In this legal battle, the real casualty is the child. The Court is also required to take care of the interest of the child. Since Mr.Kharadi has also pointed out that there is nothing to show that the father has maintained the child by paying necessary amount, as ordered by the Juvenile and Domestic Relations Court for the City of Waynesboro, at the rate of $500.00, the husband is bound to pay up the entire arrears of the aforesaid amount awarded by the Juvenile and Domestic Relations Court for the City of Waynesboro and he is required to continue to support the child. Since it is not in dispute between the parties that the child support order is still in existence and it is not varied or reversed, the respondent-father is bound to support the child till she becomes a major.

The respondent-father is required to maintain the child, Nida Karimi, by obeying the order of child support passed by the Juvenile and Domestic Relations Court for the City of Waynesboro, by which the respondent is required to pay $500.00 per month. Mr.Barot submitted that since the father has not taken any steps for all these years to provide child support to Nida Karimi, his daughter, and it may not be possible for the applicant herein to execute the said order in a swift manner, he requested that he may be permitted to effect service of

copies of this order directly on the following authorities :-

1. The Consulate General of the United States,
Consulate Section,
78, Bhulabhai Desai Road,
Mumbai - 400 026,
India;

2. Indian Ambassador in America in Washington; and

3. The Ministry of External Affairs,
South Block,
New Delhi.

It will be open for the applicant to effect service of copies of this order on the above authorities, directly.

Mr.M.R. Barot, learned Senior Counsel, has been able to find out the Social Security Number of the respondent-father. According to Mr.Barot, the said number is : 304.86.8650. Mr.Barot has also submitted that the I.D. number of the respondent is : 108 4558.

Mr.Barot submitted that the father should not be allowed to go scot-free in such a manner without fulfilling his obligation towards the child. He submitted that the father has totally ignored to support the child. Considering the aforesaid aspect of the matter, the applicant is at liberty to send copies of this order to the aforesaid authorities, with the hope that the interest of the minor may not be jeopardised, in view of the high-handed attitude of the respondent, and the agony of the minor child may not be allowed to be continued any further in view of the the high-handed attitude of the respondent-father. The aforesaid authorities will use their good offices to see that, even the employer of the respondent-father, if permissible under the U.S. law, can be asked to deduct the amount from the salary of the father and can be sent to India, where the child is residing. The name and address of the child, as given by Mr.Barot, are as under :-

Nida Karimi,
153-B, Sector 20,

Gandhinagar,
Gujarat,
India.

It is clarified that this order is passed in view of the submissions advanced before the Court, which, as such, are not disputed by the learned Advocate for the respondent-father that the child support order is still in existence and as per the orders produced by the applicant in the present proceedings. It is clarified that if there is any variation in the aforesaid order passed by the Juvenile and Domestic Relations Court for the City of Waynesboro, such modified order of the U.S. Court will remain in force. Since Mr.Kharadi, for the respondent, is not in a position to highlight this aspect, since his client is not cooperating with him, and in view of the judgment of the Court of Appeals, Virginia, reversing the order passed by the Circuit Court of Virginia, directing abatement of the child support order passed by the Juvenile and Domestic Relations Court for the City of Waynesboro, this order is passed by this Court so that the child support order, which is in existence, may not be frustrated at the hands of the respondent and the child can get support expeditiously and with this hope, it is ordered that the applicant will be at liberty to effect service of copies of this order directly on the aforesaid three authorities so that appropriate steps can be taken by such authorities in order to see that the minor child can be saved from further agony.

The applicant can even file maintenance application for supporting the child by invoking the jurisdiction of the trial court, but since the husband is in America, the said process may take considerable time, and, in the meanwhile, the child may suffer. Since there is already the order of the U.S. Court for child support, it would be just and proper to direct the husband to continue to support the child in view of the order of the Juvenile and Domestic Relations Court for the City of Waynesboro. It is the duty of the father to support the child wherever it is.

This petition is accordingly allowed, by reversing the order of the trial court. Rule is made absolute accaodingly with no order as to costs.

5th May, 2004 (P.B. Majmudar, J.)

****

(apj)